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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 RICHARD LEWIS, an Individual

12 Plaintiff,

13 v.

14 SYMANTEC CORPORATION, a corporation;
15 Does 1-50, inclusive,

16 Defendants.
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Case No. C-13-02061-RMW

ORDER REMANDING CASE

18 On March 27, 2013, plaintiff Richard Lewis ("Lewis") filed a civil complaint in the Santa
19 Clara County Superior Court alleging one cause of action for wrongful termination in violation of
20 public policy. Compl., Dkt. No. 1, Ex. A. On May 6, 2013, defendant Symantec Corporation
21 ("Symantec") removed this case to federal court on the basis of federal question jurisdiction.
22 Notice of Removal, Dkt. No. 1. Both parties agree that the only claim at issue is a claim for
23 wrongful termination in violation of public policy. However, Symantec contends in its notice of
24 removal that, because Lewis claims that certain "federal policies were violated when he 'raised
25 questions, concerns and/or objections to Symantec regarding misleading and/or false
26 representations . . ." to its customer, the U.S. Army Medical Command ("USAMC"), the claim
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"arises under," *inter alia*, the federal False Claims Act and Information Technology Management Reform Act. Notice of Removal 2. The case is now before the court on defendant's motion to dismiss. The court in reviewing the Complaint finds that it lacks subject matter jurisdiction and, therefore, remands the case back to the Santa Clara County Superior Court.

I. BACKGROUND

Lewis is a former employee of Symantec. In 2008 and 2009, Lewis worked with Symantec's Solutions Marketing group, and later transferred to a position as a field engineer within Symantec's "Security sector." Compl. ¶¶ 7, 9. Lewis alleges that, at times, he observed Symantec promoting its products to the USAMC as being certified under the Federal Information Processing Standards ("FIPS") when in fact they were not. *Id.* ¶ 10. Lewis alleges that he "raised and reported this concern to superiors in his group." *Id.* Some unidentified time later, Lewis allegedly engaged in a verbal altercation with a co-worker at a company sponsored event in Las Vegas. *Id.* ¶ 13. "[W]ithin a brief time" thereafter, Symantec's Human Resources department contacted Lewis advising him that his employment was being suspended pending an investigation. *Id.* At an unidentified time thereafter, Symantec terminated Lewis's employment. *Id.*

On March 27, 2103, Lewis filed a civil complaint in the Santa Clara County Superior Court alleging one cause of action for wrongful termination in violation of public policy. On May 6, 2013, Symantec removed this case to federal court on the basis of federal question jurisdiction.

II. ANALYSIS

Although neither party has raised the issue of jurisdiction,¹ this court has an independent obligation to examine its jurisdiction. *Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 342 (9th Cir.

¹ In Lewis's opposition to Symantec's motion to dismiss, Lewis states: "[i]t must be recognized that this case . . . is now before this Court only because Defendant recently removed it based on

1 1996). "There is a 'strong presumption' against removal jurisdiction . . . and any uncertainties are
2 to be resolved in favor of remand." *Kanter v. Warner-Lambert Co.*, 52 F. Supp. 2d 1126, 1129
3 (N.D. Cal. 1999) (internal citations omitted).

4 In *Rains*, the Ninth Circuit held that "[i]t is state, not federal, law that creates the cause of
5 action for wrongful discharge in violation of public policy." 80 F.3d at 343. In that case, the
6 defendant relied on Title VII as one of several sources of public policy supporting his state law
7 claim. *Id.* at 343. The court explained that "[t]he direct and indirect references to Title VII in
8 th[e] state law causes of action do not make those claims into federal causes of action." *Id.* at
9 344.

10 Here, the Complaint on its face raises only one claim under California state law for
11 wrongful termination in violation of public policy.² Here, like in *Rains*, the Complaint cites to
12 two federal statutes, as well as California state consumer protection laws, as various sources of
13 public policy in support of the state law claim. Compl. ¶ 15. The federal laws cited in the
14 Complaint here simply support California's public policy. Like in *Rains*, Lewis "brought a state
15 law claim and cited a federal statute as an alternate basis for establishing one element of his
16 claim." 80 F.3d at 344. "That the same facts could have been the basis for a [federal] claim does
17 not make [Lewis's] wrongful termination claim into a federal cause of action." *Id.*

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23 the stated grounds of *diversity of citizenship* of the parties." Opp'n 1, Dkt. No. 7 (emphasis
24 added). Lewis is simply incorrect. Symantec removed on the sole basis of federal question
25 jurisdiction. Notice of Removal 2. In any event, as Lewis is a California resident and Symantec
is a California corporation, diversity does not exist.

26 ² In Lewis's opposition to Symantec's motion to dismiss, Lewis expressly acknowledges that "the
27 sole cause of action alleged in the Complaint . . . [is] wrongful termination in violation of public
28 policy." Opp'n 4.

III. CONCLUSION

For these reasons, the court concludes that it lacks jurisdiction over Lewis's state law claim and REMANDS the case back to Superior Court of the State of California, County of Santa Clara.

Dated: June 10, 2013



Ronald M. Whyte
United States District Court Judge